

**ASSEMBLY BILL**

**No. 2751**

**Introduced by Assembly Member Wyland**

February 24, 2006

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An act to amend Section 66001 of the Government Code, relating to development fees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2751, as introduced, Wyland. Development project fees: use.

The Mitigation Fee Act authorizes a local agency to charge a variety of fees, dedications, reservations, or other exactions in connection with the approval of a development project, as defined. Existing law provides that in specified actions imposing a fee as a condition of approval of a development project by a local agency, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

This bill would require that a fee or other monetary exaction, other than a tax or special assessment, be for the purpose of defraying all or a portion of the cost of the public facilities directly related to the development project and may not include any costs attributable to existing deficiencies and is limited to the cost of the net increase in services made necessary by the impact of the development project.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 66001 of the Government Code is amended to read:

66001. (a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency ~~on or after January 1, 1989~~, the local agency shall do all of the following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency ~~on or after January 1, 1989~~, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 66006.

(d) (1) For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted:

(1)

(A) Identify the purpose to which the fee is to be put.

(2)

1 (B) Demonstrate a reasonable relationship between the fee and  
2 the purpose for which it is charged.

3 ~~(3)~~

4 (C) Identify all sources and amounts of funding anticipated to  
5 complete financing in incomplete improvements identified in  
6 paragraph (2) of subdivision (a).

7 ~~(4)~~

8 (D) Designate the approximate dates on which the funding  
9 referred to in ~~paragraph (3)~~ *subparagraph (C)* is expected to be  
10 deposited into the appropriate account or fund.

11 ~~When~~

12 (2) *When* findings are required by this subdivision, they shall  
13 be made in connection with the public information required by  
14 subdivision (b) of Section 66006. The findings required by this  
15 subdivision need only be made for moneys in possession of the  
16 local agency, and need not be made with respect to letters of  
17 credit, bonds, or other instruments taken to secure payment of the  
18 fee at a future date. If the findings are not made as required by  
19 this subdivision, the local agency shall refund the moneys in the  
20 account or fund as provided in subdivision (e).

21 (e) Except as provided in subdivision (f), when sufficient  
22 funds have been collected, as determined pursuant to  
23 subparagraph (F) of paragraph (1) of subdivision (b) of Section  
24 66006, to complete financing on incomplete public  
25 improvements identified in paragraph (2) of subdivision (a), and  
26 the public improvements remain incomplete, the local agency  
27 shall identify, within 180 days of the determination that sufficient  
28 funds have been collected, an approximate date by which the  
29 construction of the public improvement will be commenced, or  
30 shall refund to the then current record owner or owners of the  
31 lots or units, as identified on the last equalized assessment roll, of  
32 the development project or projects on a prorated basis, the  
33 unexpended portion of the fee, and any interest accrued thereon.  
34 By means consistent with the intent of this section, a local  
35 agency may refund the unexpended revenues by direct payment,  
36 by providing a temporary suspension of fees, or by any other  
37 reasonable means. The determination by the governing body of  
38 the local agency of the means by which those revenues are to be  
39 refunded is a legislative act.

1 (f) If the administrative costs of refunding unexpended  
2 revenues pursuant to subdivision (e) exceed the amount to be  
3 refunded, the local agency, after a public hearing, notice of which  
4 has been published pursuant to Section 6061 and posted in three  
5 prominent places within the area of the development project, may  
6 determine that the revenues shall be allocated for some other  
7 purpose for which fees are collected subject to this chapter and  
8 which serves the project on which the fee was originally  
9 imposed.

10 (g) *A fee or other monetary exaction, other than a tax or*  
11 *special assessment, whether imposed on development projects*  
12 *generally or on a specific project, that is charged by a local*  
13 *agency to the project applicant as a condition of approval of the*  
14 *development project to defray all or a portion of the costs of*  
15 *public facilities directly related to the development project, may*  
16 *not include any costs attributable to existing deficiencies and is*  
17 *limited to the cost of the net increase in services made necessary*  
18 *by the impact of the development project.*